

daughter and her children, to a trustee, without delegating to any one a power to change the investment. *When* he purchased the stocks does not appear, but enough appears in the evidence to show, that there has been little fluctuation in their intrinsic value for a long period of time, at least with reference to the stock in the Marine Bank, the dividends having averaged six per cent. for the last twenty years, clear of taxes and assessments. And it further appears from the evidence of the cashier, that the condition of the bank is now a safe one. There is no proof either way with regard to the other stocks. Now the proposition, is, to sell out these stocks without allegation or proof of their insecurity, and to invest the proceeds in the improvement of real estate, or in disincumbering it of liens now resting upon it. But it is supposed to be clear upon authority, that trustees have no power to do this, unless a special authority for so doing is conferred upon them by the trust instrument. *Earl of Winchelsea vs. Norcliff*, 1 *Vernon*, 435, and if the trustees have no such power, unless the instrument creating the trust confers it upon them, the court should hesitate to give the power, unless, impelled to do so by considerations of the most pressing character.

There is, however, another objection to the arrangement proposed in this case, which strikes me as of great force. The property proposed to be disincumbered and improved out of the proceeds of the stocks, is not held subject to the same trusts, in all respects, as the stocks themselves. The stocks are held, first, for the use of Barbara Ann Murray, during her natural life, and after her death for the use of all her children and descendants, which she may then leave living, to take *per stirpes* and not *per capita*, and in case there be no children, or their descendants living at the time of her death, then in trust, that the property shall be conveyed and assigned to the right heirs of the deviser. But the trusts of the deed, are, first, for the use of the said Barbara Ann Murray, during her coverture and widowhood, if she survive her husband, and upon her death, in trust, for the use and benefit, in equal portions of all her children, by her said husband, Richard C. Mur-